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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WONDERFUL PISTACHIOS &
ALMONDS, LLC, et al.

Plaintiffs,

v.

FACTORY MUTUAL INSURANCE
COMPANY,

Defendant.

) 1: 17-CV-00289-AWI - JLT
)
) SCHEDULING ORDER (Fed. R. Civ. P. 16)
)
) Pleading Amendment Deadline: 9/15/2017
)
) Discovery Deadlines:
) Initial Disclosures: 5/16/2017
) Non-Expert: 1/15/2018
) Expert: 3/15/2018
) Mid-Discovery Status Conference:
) 8/28/2017 at 8:30 a.m.

) Non-Dispositive Motion Deadlines:
) Filing: 4/6/2018
) Hearing: 5/4/2018

) Dispositive Motion Deadlines:
) Filing: 5/14/2018
) Hearing: 6/25/2018

) Settlement Conference:
) 5/18/2018 at 1:30 p.m.
) 510 19th Street, Bakersfield, CA

) Pre-Trial Conference:
) 8/15/2018 at 10:00 a.m.
) Courtroom 2

) Trial: 10/16/2018 at 8:30 a.m.
) Courtroom 2
) Jury trial: 5-7 days

1 **I. Date of Scheduling Conference**

2 May 12, 2017.

3 **II. Appearances of Counsel**

4 Sophie Froelich and Christa Demeke appeared on behalf of Plaintiffs.

5 Scott Johnson appeared on behalf of Defendant.

6 **III. Information Concerning the Court's Schedule**

7 Out of fairness, the Court believes it is necessary to forewarn litigants that the Fresno Division
8 of the Eastern District of California now has the heaviest District Court Judge caseload in the entire
9 nation. While the Court will use its best efforts to resolve this case and all other civil cases in a timely
10 manner, the parties are admonished that not all of the parties' needs and expectations may be met as
11 expeditiously as desired. As multiple trials are now being set to begin upon the same date, parties may
12 find their case trailing with little notice before the trial begins. The law requires that the Court give any
13 criminal trial priority over civil trials or any other matter. The Court must proceed with a criminal trial
14 even if a civil trial was filed earlier and set for trial first. Continuances of any civil trial under these
15 circumstances will no longer be entertained, absent a specific and stated finding of good cause. All
16 parties should be informed that any civil trial set to begin during the time a criminal trial is proceeding
17 will trail the completion of the criminal trial.

18 The parties are reminded of the availability of a United States Magistrate Judge to conduct all
19 proceedings in this action. A United States Magistrate Judge is available to conduct trials, including
20 entry of final judgment, pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73, and Local
21 Rule 305. The same jury pool is used by both United States Magistrate Judges and United States
22 District Court Judges. Any appeal from a judgment entered by a United States Magistrate Judge is
23 taken directly to the United States Court of Appeal for the Ninth Circuit. The parties are informed that
24 no substantive rulings or decisions will be affected by whether a party chooses to consent.

25 Finally, the Fresno Division of the Eastern District of California, whenever possible, is utilizing
26 United States Article III District Court Judges from throughout the nation as Visiting Judges. Pursuant
27 to the Local Rules, Appendix A, reassignments will be random, and the parties will receive no advance
28 notice before their case is reassigned to an Article III District Court Judge from outside of the Eastern

1 District of California.

2 Therefore, the parties are directed to consider consenting to Magistrate Judge jurisdiction to
3 conduct all further proceedings, including trial. **Within 10 days** of the date of this order, counsel
4 **SHALL** file a consent/decline form (provided by the Court at the inception of this case) indicating
5 whether they will consent to the jurisdiction of the Magistrate Judge.

6 **IV. Pleading Amendment Deadline**

7 Any requested pleading amendments are ordered to be filed, either through a stipulation or
8 motion to amend, no later than **September 15, 2017**.

9 **V. Discovery Plan and Cut-Off Date**

10 The parties are ordered to exchange the initial disclosures required by Fed. R. Civ. P. 26(a)(1)
11 on or before **May 16, 2017**.

12 The parties are ordered to complete all discovery pertaining to non-experts on or before
13 **January 15, 2018**, and all discovery pertaining to experts on or before **March 15, 2018**.

14 The parties are directed to disclose all expert witnesses¹, in writing, on or before **January 22,**
15 **2018**, and to disclose all rebuttal experts on or before **February 14, 2018**. The written designation of
16 retained and non-retained experts shall **be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B),**
17 **and (C) and shall include all information required thereunder**. Failure to designate experts in
18 compliance with this order may result in the Court excluding the testimony or other evidence offered
19 through such experts that are not disclosed pursuant to this order.

20 The provisions of Fed. R. Civ. P. 26(b)(4) and (5) shall apply to all discovery relating to experts
21 and their opinions. Experts must be fully prepared to be examined on all subjects and opinions
22 included in the designation. Failure to comply will result in the imposition of sanctions, which may
23 include striking the expert designation and preclusion of expert testimony.

24 The provisions of Fed. R. Civ. P. 26(e) regarding a party's duty to timely supplement
25 disclosures and responses to discovery requests will be strictly enforced.

26 A mid-discovery status conference is scheduled for **August 28, 2017**, at 8:30 a.m. before the
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¹ In the event an expert will offer opinions related to a site inspection, the inspection **SHALL** occur sufficiently
in advance of the disclosure deadline so the expert's report fully details the expert's opinions in this regard.

1 Honorable Jennifer L. Thurston, U.S. Magistrate Judge, located at 510 19th Street, Bakersfield,
2 California. Counsel SHALL file a joint mid-discovery status conference report one week before the
3 conference. Counsel also SHALL lodge the status report via e-mail to JLTorders@caed.uscourts.gov.
4 The joint statement SHALL outline the discovery counsel have completed and that which needs to be
5 completed as well as any impediments to completing the discovery within the deadlines set forth in this
6 order. Counsel may appear via teleconference by dialing (888) 557-8511 and entering Access Code
7 1652736, provided the Magistrate Judge's Courtroom Deputy Clerk receives a written notice of the
8 intent to appear telephonically no later than five court days before the noticed hearing date.

9 **VI. Pre-Trial Motion Schedule**

10 All non-dispositive pre-trial motions, including any discovery motions, shall be filed no later
11 than **April 6, 2018**, and heard on or before **May 4, 2018**. Non-dispositive motions are heard at 9:00
12 a.m., before the Honorable Jennifer L. Thurston, United States Magistrate Judge, at the United States
13 District Courthouse located at 510 19th Street, Bakersfield, California.

14 No written discovery motions shall be filed without the prior approval of the assigned
15 Magistrate Judge. A party with a discovery dispute must first confer with the opposing party in a good
16 faith effort to resolve by agreement the issues in dispute. If that good faith effort is unsuccessful, the
17 moving party promptly shall seek a telephonic hearing with all involved parties and the Magistrate
18 Judge. It shall be the obligation of the moving party to arrange and originate the conference call to the
19 court. To schedule this telephonic hearing, the parties are ordered to contact Courtroom Deputy Clerk,
20 Susan Hall at (661) 326-6620 or via email at SHall@caed.uscourts.gov. **Counsel must comply with**
21 **Local Rule 251 with respect to discovery disputes or the motion will be denied without prejudice**
22 **and dropped from calendar.**

23 In scheduling such motions, the Magistrate Judge may grant applications for an order shortening
24 time pursuant to Local Rule 144(e). However, if counsel does not obtain an order shortening time, the
25 notice of motion *must* comply with Local Rule 251.

26 Counsel may appear and argue non-dispositive motions via teleconference by dialing (888) 557-
27 8511 and entering Access Code 1652736, provided the Magistrate Judge's Courtroom Deputy Clerk
28 receives a written notice of the intent to appear telephonically no later than five court days before the

1 noticed hearing date.

2 All dispositive pre-trial motions shall be filed no later than **May 14, 2018**, and heard no later
3 than **June 25, 2018**, in Courtroom 2 at 8:30 a.m. before the Honorable Anthony W. Ishii, United States
4 District Court Judge. In scheduling such motions, **counsel shall comply with Fed. R. Civ. P. 56 and**
5 **Local Rules 230 and 260.**

6 **VII. Motions for Summary Judgment or Summary Adjudication**

7 **At least 21 days before** filing a motion for summary judgment or motion for summary
8 adjudication, the parties are **ORDERED** to meet, in person or by telephone, to confer about the issues
9 to be raised in the motion.

10 The purpose of the meeting shall be to: 1) avoid filing motions for summary judgment where a
11 question of fact exists; 2) determine whether the respondent agrees that the motion has merit in whole
12 or in part; 3) discuss whether issues can be resolved without the necessity of briefing; 4) narrow the
13 issues for review by the court; 5) explore the possibility of settlement before the parties incur the
14 expense of briefing a motion; and 6) to develop a joint statement of undisputed facts.

15 The moving party **SHALL** initiate the meeting and **SHALL** provide a complete, proposed
16 statement of undisputed facts **at least five days before** the conference. The finalized joint statement of
17 undisputed facts **SHALL** include all facts that the parties agree, for purposes of the motion, may be
18 deemed true. In addition to the requirements of Local Rule 260, the moving party shall file the joint
19 statement of undisputed facts.

20 In the notice of motion the moving party **SHALL** certify that the parties have met and conferred
21 as ordered above, or set forth a statement of good cause for the failure to meet and confer. **Failure to**
22 **comply may result in the motion being stricken.**

23 **VIII. Pre-Trial Conference Date**

24 **August 15, 2018**, at 10:00 a.m. in Courtroom 2 before Judge Ishii.

25 The parties are ordered to file a **Joint Pretrial Statement pursuant to Local Rule 281(a)(2).**
26 The parties are further directed to submit a digital copy of their pretrial statement in Word format,
27 directly to Judge Ishii's chambers, by email at AWIOrders@caed.uscourts.gov.

28 Counsels' attention is directed to **Rules 281 and 282 of the Local Rules** of Practice for the

1 Eastern District of California, as to the obligations of counsel in preparing for the pre-trial conference.
2 The Court will insist upon strict compliance with those rules. In addition to the matters set forth in the
3 Local Rules the Joint Pretrial Statement shall include a Joint Statement of the case to be used by the
4 Court to explain the nature of the case to the jury during voir dire.

5 **IX. Trial Date**

6 **October 16, 2018**, at 8:30 a.m. in Courtroom 2 before the Honorable Anthony W. Ishii, United
7 States District Court Judge.

- 8 A. This is a jury trial.
9 B. Counsels' Estimate of Trial Time: 5-7 days.
10 C. Counsels' attention is directed to Local Rules of Practice for the Eastern District of
11 California, Rule 285.

12 **X. Settlement Conference**

13 A Settlement Conference is scheduled for **May 18, 2018** at 1:30 p.m., located at 510 19th
14 Street, Bakersfield, California. Notwithstanding the provisions of Local Rule 270(b), the settlement
15 conference will be conducted by Magistrate Judge Thurston. The Court deems the deviation from the
16 Local Rule to be appropriate and in the interests of the parties and justice and sound case management
17 based upon the location of the parties. **If any party prefers that the settlement conference is**
18 **conducted by a judicial officer not already assigned to this case, that party is directed to notify**
19 **the Court at least 60 days in advance of the scheduled settlement conference to allow sufficient**
20 **time for another judicial officer to be assigned to handle the conference.**

21 Unless otherwise permitted in advance by the Court, **the attorneys who will try the case shall**
22 **appear** at the Settlement Conference **with the parties** and the person or persons having **full authority**
23 to negotiate and settle the case **on terms**² discussed at the conference. Consideration of settlement is a
24 serious matter that requires preparation prior to the settlement conference. Set forth below are the
25 procedures the Court will employ, absent good cause, in conducting the conference.

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28 ² Insurance carriers, business organizations, and governmental bodies or agencies whose settlement agreements are subject to approval by legislative bodies, executive committees, boards of directors or the like shall be represented by a person or persons who occupy high executive positions in the party organization and who will be directly involved in the process of approval of any settlement offers or agreements. To the extent possible, the representative shall have authority, if he or she deems it appropriate, to settle the action on terms consistent with the opposing party's most recent demand.

1 **At least 21 days** before the settlement conference, Plaintiff **SHALL** submit to Defendant via
2 fax or e-mail, a written itemization of damages and a meaningful³ settlement demand which includes a
3 brief explanation of why such a settlement is appropriate. Thereafter, **no later than 14 days** before the
4 settlement conference, Defendant **SHALL** respond, via fax or e-mail, with an acceptance of the offer or
5 with a meaningful counteroffer, which includes a brief explanation of why such a settlement is
6 appropriate.

7 If settlement is not achieved, each party **SHALL** attach copies of their settlement offers to their
8 Confidential Settlement Conference Statement, as described below. Copies of these documents shall
9 not be filed on the court docket.

10 **CONFIDENTIAL SETTLEMENT CONFERENCE STATEMENT**

11 At least five court days prior to the Settlement Conference, the parties shall submit, directly to
12 Judge Thurston's chambers by e-mail to JLTOrders@caed.uscourts.gov, a Confidential Settlement
13 Conference Statement. The statement **should not be filed** with the Clerk of the Court **nor served on**
14 **any other party**, although the parties may file a Notice of Lodging of Settlement Conference
15 Statement. Each statement shall be clearly marked "confidential" with the date and time of the
16 Settlement Conference indicated prominently thereon.

17 The Confidential Settlement Conference Statement shall include the following:

- 18 A. A brief statement of the facts of the case.
- 19 B. A brief statement of the claims and defenses, i.e., statutory or other grounds upon which
20 the claims are founded; a forthright evaluation of the parties' likelihood of prevailing on
21 the claims and defenses; and a description of the major issues in dispute.
- 22 C. A summary of the proceedings to date.
- 23 D. An estimate of the cost and time to be expended for further discovery, pretrial and trial.
- 24 E. The relief sought.
- 25 F. The party's position on settlement, including present demands and offers and a history of
26 past settlement discussions, offers and demands.

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³ "Meaningful" means the offer is reasonably calculated to settle the case on terms acceptable to the offering party. "Meaningful" does not include an offer which the offering party knows will not be acceptable to the other party.

1 **XI. Requests for Bifurcation, Appointment of Special Master, or other**
2 **Techniques to Shorten Trial**

3 Not applicable at this time.

4 **XII. Related Matters Pending**

5 There are no pending related matters.

6 **XIII. Compliance with Federal Procedure**

7 All counsel are expected to familiarize themselves with the Federal Rules of Civil Procedure
8 and the Local Rules of Practice of the Eastern District of California, and to keep abreast of any
9 amendments thereto. The Court must insist upon compliance with these Rules if it is to efficiently
10 handle its increasing case load, and sanctions will be imposed for failure to follow the Rules as
11 provided in both the Federal Rules of Civil Procedure and the Local Rules of Practice for the Eastern
12 District of California.

13 **XIV. Effect of this Order**

14 The foregoing order represents the best estimate of the court and counsel as to the agenda most
15 suitable to dispose of this case. The trial date reserved is specifically reserved for this case. If the
16 parties determine at any time that the schedule outlined in this order cannot be met, counsel are ordered
17 to notify the court immediately of that fact so that adjustments may be made, either by stipulation or by
18 subsequent status conference.

19 **The dates set in this Order are considered to be firm and will not be modified absent a**
20 **showing of good cause even if the request to modify is made by stipulation. Stipulations**
21 **extending the deadlines contained herein will not be considered unless they are accompanied by**
22 **affidavits or declarations, and where appropriate attached exhibits, which establish good cause**
23 **for granting the relief requested.**

24 Failure to comply with this order may result in the imposition of sanctions.

25
26 IT IS SO ORDERED.

27 Dated: May 12, 2017

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE